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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/084,232	02/28/2002	Leslie Dort	A889577US	7803
23971	7590	10/19/2004	EXAMINER	
BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA			BROWN, MICHAEL A	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 10/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/084,232	DORT, LESLIE	
	Examiner	Art Unit	
	Michael Brown	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-10,12-39,44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-5,7-10,12,15-39,44 and 45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-10, 15-20, 22-24, 26-34 and 36-38 are rejected under 35

U.S.C. 102(b) as being anticipated by Burr.

Burr discloses in figures 1-4 a device for retaining a tongue comprising a flange 37 having a first surface (the outer surface of 37 facing away from the device), a second surface (the opposite surface of 37 facing towards the tubular portion of the device), sized and shaped to fit between a person's lips and the frontal surface of a person's teeth (fig. 9), the flange includes a protrusion 32, an aperture 34 formed between the first and second surfaces of the flange, the flange and the protrusion are an integrally molded one-piece body (the device can be formed by molding, col. 4, line 68), the aperture receives the tongue (fig. 9), the aperture includes walls (the walls of 32) that form a bulb 32, the flange and the bulb form a molded one-piece body, the walls form a smooth continuous surface with the first surface of the flange (fig. 4), the proximal end of the aperture is radius (fig. 4), the distal end of the aperture is radius (fig. 4), the thickness of the body is between .010 inches and about .060 inches (.010 inches), the body has a constant thickness across its entire cross-section (fig. 5), the flange is pliable (latex) rubber, the flange is adjustable (made of a material that will allow the

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user to move (adjust) the device to fit between the lips and the front of the teeth) and the flange is curved (fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 12, 21, 25, 35, 39 are and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burr in view of Alvarez

Burr discloses in figures 1-5 a device for retaining a tongue, substantially as claimed. However, Burr does not disclose the body being made of polyethylene. Alvarez teaches in figures 1-18D a device for retaining a tongue made of polyethylene (col. 5, lines 50-55). It would have been obvious to one having ordinary skill in the art at the time that the device disclosed by Burr could be fabricated of polyethylene because it is a soft durable material. The thickness of the body could be between .025 inches and about .040 inches because the thickness is not critical. The kit disclosed in claims 44-45 is provided by the device disclosed by Burr. The instructions do not provide novelty over the prior art, because any medical device will provide instructions. The flange could be trimmed in order to make the flange fit the user's mouth.

Allowable Subject Matter

Claims 13-14 are allowed.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
October 18, 2004



MICHAEL A. BROWN
PRIMARY EXAMINER